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In

The Supreme Court

of the United States

OCTOBER TERM, 1944

No. 497

ROWENA THORNTON,
Petitioner,

vs.

CITY OF PORTLAND,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

On March 10, 1942, the petitioner, Rowena Thornton, was charged in the Municipal Court of the City of Portland, Oregon, with a violation of Ordinance No. 76339 by permitting her daughter, a minor girl ten years of age, to expose and offer for sale on the street of said city a magazine (Tr. p. 1). Upon being tried she was found guilty

on October 27, 1942, when a fine of $25.00 was imposed. She appealed to the Circuit Court of the State of Oregon for Multnomah County, where she had a trial de novo on July 8, 1943, was found guilty and fined $25.00 (Tr. pp. 4-233). She then appealed to the Supreme Court of Oregon, where the case was argued and submitted on June 6, 1944. An opinion was rendered on June 27, 1944, affirming the judgment of the lower court (Tr. pp. 253-260, and see 49 P. (2d) 972).

POINTS, AUTHORITIES AND ARGUMENT

The respondent objects to the issuance of a writ of certiorari on the grounds: (1) that the Supreme Court of Oregon has not decided a federal question which has not been heretofore determined by this court; (2) that the decision of the Supreme Court of Oregon is in accord with applicable decisions of this court, and (3) that the points presented in the petition and accompanying brief fail to show any adequate ground for this Court to issue the writ of certiorari.

(1) *This court has fully determined the questions raised by the petition.*

On January 31, 1944, in the case of *Sarah Prince v. Commonwealth of Massachusetts,* 321 U. S. 158, 88 L. ed. 403, 64 Sup. Ct. 438, this Court squarely passed upon a statutory

provision almost identical with the ordinance provision here challenged, and held it constitutional. The statute there before the court provided: "No boy under twelve and no girl under eighteen shall sell, expose or offer for sale any newspaper, magazine, periodical or any other articles of merchandise of any description * * * in any street or public place," and that "any parent, guardian or custodian having a minor under his control who compels or permits such minor to work in violation of the above provision, shall for a first offense be punished by a fine of not less than $2.00 nor more than $10.00 or by imprisonment for not more than five days, or both * * *."

The ordinance provision here challenged by the petitioner provides that it shall be unlawful for any "parent, guardian, custodian or person having charge or control of any boy under the age of ten years or any girl under the age of eighteen years to permit any such boy or girl to sell, expose or offer for sale on any street any newspaper, magazine or periodical * * *." (Tr. pp. 152 and 245).

The opinion of Judge Tooze, who presided at the trial in the Circuit Court for Multnomah County, was rendered before the opinion of this court in the Prince case. It is printed in full on pages 143-226 of the transcript.

The argument before the Supreme Court of Oregon in behalf of Rowena Thornton placed special emphasis upon

provisions of the Oregon Constitution which were claimed to be stronger in favor of Mrs. Thornton than the provisions of the Federal Constitution. This point was developed especially for the purpose of avoiding the decision of this court in the Prince case. The Supreme Court of Oregon on this subject said: (See Tr., appellant's abstract, par. 56)

> "Since the appeal was perfected in this court, the Supreme Court of the United States, on January 31, 1944, in *Sarah Prince v. Commonwealth of Massachusetts,* 321 U. S. 158, 88 L. ed. 403, 64 S. Ct. 438, sustained the validity of sections 80 and 81 of the child labor law of Massachusetts * * *. The Prince case involved the Jehovah's Witnesses and is based upon a similar factual situation. It was urged there, as here, that such exercise of the police power infringed upon freedom of worship as guaranteed by the First and Fourteenth Amendments to the Constitution of the United States. The Supreme Court, however, held that the enactment of the statute was a reasonable exercise of the police power and that it was not forbidden by the Fourteenth Amendment. Counsel for appellant, with commendable frankness, concede that the Prince decision is controlling and is adverse to their contentions based upon alleged violation of the federal Constitution, but nevertheless contend that, under the Constitution of this state, defendant is entitled to relief against infringement of her religious liberty."

The Supreme Court of Oregon further held that the constitutional provisions of Oregon were similar to the Federal Constitution provisions in the particulars mentioned.

The decision in the Prince case was therefore followed. From the above it follows that the state court has not decided a federal question not heretofore determined by this court.

(2) *Nor did the Oregon courts decide the question in a way probably not in accord with applicable decisions of this court.*

The freedoms mentioned in the 1st Amendment of the Federal Constitution and protected against state infringement by the 14th Amendment do not override the police power of the state when reasonably exercised, even though such exercise of police power places certain restraints upon the free exercise of religion or abridge the freedom of speech or the press. This court in the Prince case very well said:

> "And neither rights of religion nor rights of parenthood are beyond limitation. Acting to guard the general interest in youth's well-being, the state as parens patriae may restrict the parent's control by requiring school attendance, regulating or prohibiting the child's labor, and in many other ways. Its authority is not nullified merely because the parent grounds his claim to control the child's course of conduct on religion or conscience. Thus, he cannot claim freedom from compulsory vaccination for the child more than for himself on religious grounds. The right to practice religion freely does not include liberty to expose the community

or the child to communicable disease or the latter to ill health or death."

In 11 American Jurisprudence at page 969 (Constitutional Law, sec. 245) it is said, concerning police power:

> "The breadth and extent of the power, covering the exigencies confronting the community, its adaptability, durability, inalienability, and the number of public purposes included in its scope make it a principal pillar of government. It has been stated that the police power in effect sums up the whole power of government, and that all other powers are only incidental and ancillary to the execution of the police power; it is that full final power involved in the administration of law as the means to the attainment of practical justice. Moreover, it has been said that the very existence of government depends on it, as well as the security of the social order, the life and health of the citizen, the enjoyment of private and social life, and the beneficial use of property."

As concerns the relationship between constitutional rights and police power the same article at section 259 reads:

> "A police regulation, obviously intended as such, and not operating unreasonably beyond the occasions of its enactment, is not rendered invalid by the fact that it may affect incidentally the exercise of some right guaranteed by the Constitution. For example, it is said that the proper exercise of the police power is not subject to restraint by constitutional provisions designed for the general protection of rights of individual life, liberty and property. * * *."

And at page 1139 (sec. 330) we read further:

> "Constitutional liberty is always a relative term and, at most, means liberty regulated by just and impartial laws; in other words, such liberty is natural liberty so far restrained by human laws as is necessary and expedient for the general advantage of the public. It implies the absence of arbitrary restraint, and not immunity from reasonable regulations and prohibitions imposed in the interests of the community."

At sections 255 and 256 it is shown that police power exists in the various states which may in turn authorize its exercise by municipal corporations within the state, and it is said that the power "appears to be impliedly granted to every municipal corporation from the mere fact of its organization as a government subdivision."

At pages 1007 and 1008 (sec. 267) we read further:

> "It cannot be disputed that, broadly speaking, the legislature may enact laws regulating, restraining, or prohibiting anything harmful to the welfare of the people, even though such regulation, restraint or pro- of a feeble-minded mother and the mother of a individual, because it may consider the relation of rights, accommodate their co-existence, and, in the interests of the community, limit one right that others may be enjoyed. The rights of the individual are, therefore, subordinate to the welfare of the general public. If the police power is properly exercised, it is immaterial that it operates harshly on some individual or causes him inconvenience or loss. Citizens may, for the public good, under some circumstances, be re-

strained in their conduct even with reference to matters in themselves lawful and right."

Page 1140 (sec. 331): "Thus, without violating the constitutional guaranty of liberty, the state may forbid one to make use of polluted water for drinking purposes, may provide for the sterilization of a feeble minded inmate of a state institution who is the daughter of a feeble-minded mother and the mother of an feeble-minded child, may prohibit one, under penalty, from becoming a member of a secret, oath-bound association which has not filed a copy of its constitution, by-laws, rules, regulations, and oath of membership, and the roster of its membership, and may prohibit the publication of information which would have a tendency to induce people to gamble. * * *."

(Page 1141): "It is often difficult to draw the line between the rights of the citizen to pursue and enjoy liberty and to seek and obtain happiness, on the one side, and the right of the state to enact laws in the general interests of all the people, on the other side. The prevailing view is that individual rights must yield to proper and reasonable regulation imposed for the best interests of the entire community."

The decision of this court in *West Coast Hotel Co. v. Parrish,* 300 U. S. 379, 81 L. ed. 703, 57 S. Ct. 578, 108 A.L.R. 1330, illustrates the principles above stated, where the court in upholding the validity of a statute fixing minimum wages for women, speaking by then Mr. Chief Justice Hughes, said: (Page 391 of 300 U. S.)

"Liberty in each of its phases has its history and connotation. But the liberty safeguarded is liberty in a social organization which requires the protection of law against the evils which menace the health, safety, morals and welfare of the people. Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process. * * *.

(Page 395): "We concluded that the limitations which the statute there in question 'placed upon her contractual powers, upon her right to agree with her employer as to the time she shall labor' were 'not imposed solely for her benefit, but also largely for the benefit of all.' "

And at page 398 the court quotes from *Nebbia v. New York*, 291 U. S. 502, 78 L. ed. 940, 54 S. Ct. 505, 89 A.L.R. 1469 where a statutory provision fixing the minimum prices for milk was sustained, saying:

"If such laws 'have a reasonable relation to a proper legislative purpose, and are neither arbitrary nor discriminatory, the requirements of due process are satisfied;' that 'with the wisdom of the policy adopted, with the adequacy or practicability of the law enacted to forward it, the courts are both incompetent and unauthorized to deal;' that 'times without number we have said that the legislature is primarily the judge of the necessity of such an enactment, that every possible presumption is in favor of its validity, and that though the court may hold views inconsistent with the wisdom

of the law, it may not be annulled unless palpably in excess of legislative power.' "

The ordinance provision here under consideration is manifestly an exercise of police power. It looks to the safety and well-being of young children. It is intended to give them a measure of protection against the bad effect of work, evil influences and danger of accident on a public street in a large city. The evidence in this case shows that the petitioner's daughter was located on a heavily travelled street in the business district of a city of more than 300,000 inhabitants. The occasion was an entire Saturday afternoon, March 7, 1942 (Tr. p. 34)—a time when street traffic was likely to be heavier than at other times; that the daughter was stationed near a pool hall, a barber shop and an establishment operated by a gypsy phrenologist (Tr. pp. 94-97). If the parent may select a place of this character for her daughter to stand, then she may select a place in front of a drinking establishment or a place largely patronized by immoral and degraded people. There is nothing to prevent an evil-minded man from purchasing a magazine held out by the petitioner's daughter and at the same time inviting the daughter to meet him at an appointed time and place, or slip her a note which will excite her curiosity sufficiently to cause her to meet him. A child of such immature years should not be placed in a position where she will be likely to hear and see things that will direct

her thoughts toward evil. She should not be where she is liable to be jostled and perhaps injured by grown persons who are hurrying to reach a conveyance or place of appointment. She should not be placed on streets where she will discommode the normal flow of traffic even though she be "preaching the Gospel" by holding out magazines such as "Consolation" and "Watchtower".

It is insufficient to say that the mother accompanied the child and would have protected and guarded her. Even if it be presumed that the petitioner would have had the purpose to do so, it is not apparent that she would have fully succeeded, and it does not appear that other mothers would have accompanied their children on similar errands or that they would have exercised as much judgment and discretion as the petitioner might exercise.

It is insufficient to say that other children accompany their mothers when on shopping errands, for at such time the mothers and children are moving and remain on the street but a short time. The child is not stationed and left standing in front of a gypsy phrenologist's place of business, or in front of other places which excite suspicion and evil thoughts.

Furthermore, the city, the state and the nation is especially interested in the welfare of its children, because they are the future citizens. They should be given the

opportunity to play with other children at times when they are not in school or engaged in essential home work, for thus they develop health and strength, and a personality which is not warped or distorted and which is alert, co-operative and capable. A child who engages in sports with other children on Saturday afternoons and at other proper times, learns how to avoid the unpleasant personalities of others, becomes resourceful, and develops an active and strong mind and body, whereas a child who is overworked or is subjected to a monotonous routine like standing on the street for hours at a time holding magazines out for sale (or as petitioner claims for "distribution") is likely to become stolid and grow up with a resentful mind, an inferiority complex, and thus be lacking in the elements of good citizenship.

From the above we respectfully maintain that the law as followed by the Supreme Court of Oregon in reliance upon the decision of this court in the Prince case affirming the decision of the Supreme Court of Massachusetts (*Com. v. Prince*, 313 Mass. 225, 46 N. E. (2d) 755) is in accordance with the law previously announced by this court in other cases, and by other courts. The case as decided by the Supreme Court of Oregon is therefore in accordance with the applicable decisions of this court.

(3) *Review of points advanced by petitioner.*

This brief should not be closed without briefly reviewing the points advanced in behalf of the petitioner.

On pages 10, 17, and 20-29 of the petition and brief the point is advanced that the conviction deprives the petitioner of liberty and property without due process of law in that the judgment of conviction was entered without a finding of facts clearly supporting the legislative judgment "so as to overcome the presumption of unconstitutionality which attaches to this ordinance by reason of its operation as a prima facie denial and infringement of the constitutional right of freedom and worship."

We have seen from the above that there is no presumption of unconstitutionality with respect to legislation of this character. On the contrary, the legislative branch of the government is presumed to have acted upon proper information and that conditions existed which warranted the legislation unless the case be such that the court from its own investigation can see beyond doubt that the legislation is wholly unreasonable, and adapted to no valid purpose within the police power of the state or city.

Aside from what this court has said in the Prince case and other cases above cited, we call attention to the following which strongly support our position that legislative action is presumed to be constitutional and valid; that the

burden is on him who challenges its constitutionality to show by such clear proof as to leave no room for doubt concerning its invalidity, and that in the absence of such showing the legislation will be sustained.

In 16 Corpus Juris Secundum 517, "Constitutional Law", section 198, the law is thus stated:

> "In passing on the validity of statutes purporting to have been enacted under the police power, the courts must disregard all matters that relate to the wisdom or policy of the act, and may declare the act void only when it clearly appears that it bears no real or substantial relation to the police power, or the means adopted for effecting the object are manifestly arbitrary and unreasonable; they cannot review the economics or facts on which the legislation based its conclusions that an existing evil should be remedied by an exercise of the police power."

Many authorities are cited supporting this statement, including *Jones v. City of Portland* (Me.), 245 U. S. 211, 62 L. ed. 252, 38 S. Ct. 112, L.R.A. 1918C 765, Ann. Cas. 1918E 660, affirming 113 Me. 123, 93 Atl. 41.

In 11 American Jurisprudence, pages 1088 and 1089 (Constitutional Law, sec. 306) the principle is thus stated:

> "All general principles relating to the presumptions of validity surrounding legislation, and to the duty of courts to uphold the legislative action if possible, apply with particular emphasis to exercises of the police power. The constitutionality of such measures is presumed, and it must also be presumed that the legis-

> lature has carefully investigated and determined that the interests of the public require such legislation, for the courts are reluctant to attribute a want of good faith in the exercise of the power. Moreover, it is their duty to sustain police measures unless such are clearly, plainly and palpably in violation of the Constitution. It is not enough that the case is a doubtful one; the act must be so clearly unreasonable that the court can say that no fair minded man can think it reasonable. An earnest conflict of serious opinion does not suffice to bring such an act within the range of judicial cognizance. Furthermore, a statute enacted for the protection of the public health will be upheld if by any fair construction it has a tendency to effect its object. * * *."

Many decisions by this court and by other courts are cited in the footnotes accompanying the above.

Petitioner has failed to cite any decisions contrary to the above, and we are unable to see how one branch of the government, viz., the judicial, could reasonably adopt a presumption that another branch of the government, viz., the legislative, has acted without proper information or in disregard of constitutional rights when enacting police legislation.

At page 20 of petitioner's brief a quotation is given from page 285 of "The Struggle for Judicial Supremacy" by Robert H. Jackson, now Mr. Justice Jackson, which contains the sentence: "The presumption of validity which

attaches in general to legislative acts is frankly reversed in the case of interferences with free speech, free press and free assembly, and for a perfectly cogent reason."

No citation of court decisions is given in support of this statement. The "cogent reason" referred to seems to be that free speech, free press and free assembly constitute channels of opinion and of peaceable persuasion, which cannot be readily corrected by the processes of the ballot box, whereas, "ordinarily legislation whose basis in economic wisdom is uncertain can be redressed by the processes of the ballot box or the pressures of opinion."

We will not discuss the cogency of the reason further than to call attention to the facts that a majority of the court has apparently not adopted the supposed presumption, and that Mr. Justice Jackson rendered an opinion dissenting from the grounds given by the majority opinion of this court in deciding the Prince case but agreeing with the majority in affirming the judgment of the Supreme Court of Massachusetts and upon the grounds given by that court. The point concerning the *presumption* of validity or invalidity of the statutory provision was mentioned by Mr. Justice Murphy in his dissenting opinion, who (at page 411 of 88 L. ed.) used the language quoted on pages 22 and 23 of petitioner's brief. The thoughts there expressed were not concurred in by a majority of the court. We

conclude, therefore, that the supposed presumption of invalidity or rather as Mr. Justice Murphy expressed it the burden being on the state "to prove the reasonableness and necessity of prohibiting children from engaging in religious activity of the type involved in this case" did not fail to receive the attention of the court and that the majority of the court adhered to the long standing and well founded presumption that the legislative branch of the government acts upon adequate information and for a proper objective.

The case of *Busey v. Dist. of Columbia,* 138 F. (2d) 592, at page 595 weakly supports petitioner's point under circumstances where the validity or invalidity of an ordinance provision is dependent on certain facts which appear to be no more probable than improbable and when the proof concerning the facts is more readily available to the one maintaining validity of the ordinance, as was the case there under consideration where the validity or invalidity of the ordinance depended upon the fact whether the license fees were substantially more than the cost of policing. What was there said has no application to the ordinance here in question where there is no claim of invalidity because of a license fee,—and in fact there is no fee.

The petitioner seems to confuse the presumption of proper action on the part of the legislative authority with the "clear present danger" rule followed by this court in

some of the cases, especially in *West Virginia State Board of Education v. Barnette,* 319 U. S. 624, 87 L. ed. 1628, and see especially pages 633 and 634 of 319 U. S. This rule, as we understand it, is to the effect that under our system of free speech and expression of opinions, legislation restricting expressions of opinion is unreasonable and invalid unless it is confined to circumstances which are such as to indicate a present danger to the public welfare. In other words, the individual has a right to entertain his own thoughts and to voice or publish his thoughts free of legislative restriction unless in doing so he brings about a present danger detrimental to the public welfare.

This rule does not raise any presumption of statutory invalidity. It merely serves as a guidepost along the road of judicial activity. In so far as the rule has any application in a case like the one here at bar, it supports the ordinance rather than condemns it, as we think, for the reason that the ordinance discloses on its face a clear present danger which concerns the public welfare. Children who stand like statutes on a street for hours at a time holding out a magazine whether acting under compulsion or by their own free will as the result of indoctrination are far less likely to develop a robust constitution and a mental attitude which will make for good citizenship than children who are permitted to play with other children and thus gain physical strength, mental alertness, a spirit of cooperation, and a

friendly attitude toward others. Moreover, children who stand on the streets are in danger of physical injury; they learn many evils of the world which may corrupt or warp their minds through life; they fail to get the friendly and social attitude which comes by association with other children and in the home life.

We observe more that children posted along crowded streets make the streets less convenient for ordinary use because adults must take extra care to avoid rudeness or injury to the children.

The thought has often been expressed that Jehovah's Witnesses by offering for sale magazines and books printed by Watchtower Bible and Tract Society are preaching and practicing religion. At pages 6 and 7 of the petition this thought is advanced and it is said that the work "is carried on by Jehovah's Witnesses in the public interest without hope of pecuniary return to any individual or group of individuals."

The record of this case, however, shows that their activity is not religious; it is not without hope of pecuniary return, and it is not carried on in the public interest; that they are most vehemently opposed to all religions and to our government as well as to all other governments; that they acknowledge no allegiance to any government except the Theocratic Kingdom which as they maintain was started

in 1914 and which will achieve its full objective as a result of the great Armageddon which is soon to happen.

We call attention to the testimony of the petitioner who when on the witness stand was questioned concerning the books entitled "Enemies", "Religion" and "Government". She testified that these books represent not only a part of the views of Jehovah's Witnesses but, as she said "It is the views of Jehovah's Witnesses. It is the truth. It is the physical facts alongside the prophecies." (Tr. pp. 59-60). These books were offered and received in evidence. The book entitled "Enemies" contains statements as follows:

(Page 118): "The Devil was the originator of religion, and the Devil is the father of lies and a 'murderer from the beginning' and ever thereafter. * * *."

(Page 130): "There is no such thing in existence as 'the Christian religion', because all religion proceeds from God's enemy, the Devil. 'Christian religion' is a misnomer, fraudulent and deceptive."

(Page 174): "What is the soul? It is a living, breathing creature. Every man is a soul, but no man possesses a soul. * * * By what authority is the claim made that death is merely the separation of the body and soul and that the soul lives on? That claim is based wholly on the Devil's lie. * * *."

(Page 204): "Politics and commerce, added to religion, form the elements of Satan's organization."

(Page 221): "Religion has been a means employed by the Devil to build his mighty organization on earth, which has deceived millions; and religion and religion-

ists, according to the prophecies of God, will be the first of Satan's organization to be destroyed at the beginning of Armageddon."

(Pages 326 and 327): "The word 'Armageddon' means the place of assembly of troops, that is, where God's people are, and Satan gathers his forces together to destroy them. Knowing his time is short, Satan is hurrying his forces on for the conflict; and concerning this it is written: 'And I saw three unclean spirits like frogs come out of the mouth of the dragon, and out of the mouth of the beast, and out of the mouth of the false prophet. * * *.'"

"The term 'beast' here used symbolically stands for the governments of the nations of the earth, particularly of 'Christendom', which are beastly and cruel. * * *."

(Page 351): "All the wars combined that have ever afflicted mankind cannot be compared to what Armageddon will bring upon the world in the way of trouble."

Judge Walter L. Tooze, before whom the case was tried in the Circuit Court, took the trouble to write a long opinion which is printed at pages 143-226 of the transcript,—appellant's abstract, where, at pages 163-169, quotations are given from the book on "Government". We ask, however, that the court in the event of considering this phase of the case examine the three books, "Religion", "Enemies" and "Government" and note the illustrations concerning government and religion. They are plaintiff's exhibit 4.

The petitioner was asked: "Suppose there is a conflict between what you term God's law and man made law, which would you abide by? A. * * * I would abide by God's law, because we recognize—even the President of the United States takes an oath on the Bible, and therefore we recognize the Bible as the highest law governing man. Therefore, we will obey God rather than man. The Court: Then do you carry that to the extent of obeying God as you yourself interpret God's word? A. I don't know whether I just understand you, your Honor. We obey all the laws of the land that are not in conflict with God's law. The Court: But who determines—A. The Scriptures answer that. * * *. The Court: Then it is your determination, isn't it? A . That is right, as a Christian." (Tr. pp. 45-49).

From the above it will be seen that Jehovah's Witnesses not only recognize no religion but are most strenuously opposed to all religions and to all governments other than the Theocratic Kingdom. This Kingdom as they conceive it is not a spiritual kingdom in Heaven but a kingdom on this earth which will have full control when the government of the United States and the governments of other nations are overthrown as a result of the great battle of Armageddon, when all those who believe in religion and in government as administered in this and in other countries will be utterly destroyed and Jehovah's Witnesses will be vested with lives of everlasting happiness.

The Theocratic Government, as conceived by them, tolerates no lack of fealty. They must be loyal to it and to no other government. This explains more fully why they so strenuously refuse to salute our flag, to pledge allegiance to our country, to take part in any governmental effort, or aid in the national defense even though our country be in the greatest danger of being overrun by the most brutal of mankind. (Here compare *Race v. United States,* 129 F. (2d) 204, 209, *United States v. Mroz,* 136 F. (2d) 221, 225, 226, petition for writ of certiorari denied in 320 U. S. 805).

As concerns the statement that the work of Jehovah's Witnesses is in the public interest without hope of pecuniary return we maintain from the above that their work is not in the public interest. Although by reason of our liberality we tolerate it when performed by adults, when they press little children into the service of standing on crowded public streets for long periods in order to present magazines for sale, we most emphatically believe that in the interest of the public welfare our spirit of liberality should be stayed.

The record of this case shows, moreover, that Jehovah's Witnesses do have hope of pecuniary return when standing on the streets holding up the magazines to the public and carrying a bag which prominently shows that the magazines are for sale at 5c per copy. The evidence shows that the petitioner pays 2½c per copy at the time of receiving the

magazines; that she obtains 5c per copy from those who "are of good will" and buy; that she and other workers obtain donations from persons "of good will", and that no accounting for the money thus received is required or expected by Watchtower Bible and Tract Society. (See Testimony of Norman Larson who is known as "the company's servant" and who acts in the capacity of a representative of the Watchtower Bible and Tract Society, the printing house which furnishes the magazines, in the matter of delivering the magazines to Jehovah's Witnesses and collecting 2½c in cash per copy at the time of making delivery, Tr. "Appellant's Abst." pp. 113-132,—especially pp. 111-115).

Mr. Justice Cardozo when writing a concurring opinion in *Hamilton v. University of California*, 293 U. S. 245, said (page 268, 355 of 79 L. ed.):

> "The conscientious objector, if his liberties were to be thus extended, might refuse to contribute taxes in furtherance of a war, whether for attack or for defense, or in furtherance of any other end condemned by his conscience as irreligious or immoral. The right to private judgment has never yet been so exalted above the powers and the compulsion of the agencies of government. One who is a martyr to a principle—which may turn out in the end to be a delusion or an error—does not prove by his martyrdom that he has kept within the law."

And in *Jones v. Opelika,* 316 U. S. 584, 86 L. ed. 1691, Mr. Justice Reed, who wrote the opinion for the court, said (page 594 of 316 U. S.):

> "Too many settled beliefs have in time been rejected to justify this generation in refusing a hearing to its own dissentients. But that hearing may be limited by action of the proper legislative body to times, places and methods for the enlightenment of the community which, in view of existing social and economic conditions, are not at odds with the preservation of peace and good order."

What we have here said is not with a view of antagonizing Jehovah's Witnesses or minimizing the freedoms which are vouchsafed by our federal and state constitutions, but with the hope of showing that our constitutions and government are not so defective as to exempt Jehovah's Witnesses or any other organization from statutory or ordinance provisions like those here considered and thus permit them to carry on a course of conduct that will subject children to a service which endangers their health, safety and morals, and which impairs their development into able-bodied, alert, active, reasonably tolerent and capable men and women,—even though our constitution permits the mothers and others to teach the children that the government under which they live and enjoy a free education and a large measure of liberty is a "beast" which is soon to be destroyed.

In conclusion we earnestly maintain that the petition presents no substantial question which was not passed upon by this court in the Prince case; that the points relied upon by the petitioner have been determined adversely to the petitioner in other cases before this court, and that a cursory examination of the facts as disclosed by the record accompanying the petition will show that the petition is without merit and should be denied.

Respectfully submitted,

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